

**RAIL SERVICE COMPETITION COUNCIL
MINUTES OF THE MEETING**

**Tuesday
November 18, 2008
10:00am – 3:00pm**

**Transportation Commission Room
2701 Prospect Ave.
Helena, Montana**

COUNCIL MEMBERS PRESENT: Carla Allen, Doug Miller, Russ Hobbs, Larry Bonderud, Sen. Ken Hansen, Jim Lynch and Evan Barrett

COUNCIL MEMBERS ABSENT:

John DeMichiei, Bill Fogarty, Rep. Mike Milburn, Ron de Yong, Dan Bucks

REPRESENTING COUNCIL MEMBERS:

Larry Finch for Dan Bucks; Court Jensen for Ron de Yong

AGENCY REPRESENTATIVES AND GUESTS:

Will Roehm, Mary Ann Fiehrer, Dick Turner, Barry Stang, Mark Blazer, Steve Wade, George Paul, Gary and Patty Schlaeger, Court Jensen, Nicole Hagerman, Arnie Sherman, Jim Currie.

RSCC ASSISTANCE: Gloria O'Rourke and Terry Whiteside

1.0 to 3.0 MEETING OPENING

Chairman Mike O'Hara called the meeting to order and requested roll call as well as introductions from the audience.

4.0 APPROVAL OF MINUTES

Chairman O'Hara requested approval of the Minutes from the September 17th RSCC meeting, November 3rd Ag Subcommittee and November 17th Coal Subcommittee meetings. Jim Lynch moved to approve the minutes, Russ Hobbs seconded the motion. All voted to approve.

5.0 REVIEW OF MONTANA LEGISLATIVE REPORT

The following changes will be made to the RSCC Legislative Report:

- Remove the section on potential legislative items as such items will be generated from Jim Lynch's office.
- Change Attachment J title to read "Farm Producers Survey 2006";
- Terry Whiteside will provide a brief summary to the Farm Producers Survey 2007 with a weblink to the full report online. Only the 2006 Farm Producers Survey Executive Summary will be in the report with a weblink to the full report online.
- Remove Attachment I and imbed it in Attachment G with the Forest/Industry Subcommittee Minutes.
- Insert divider pages between each Subcommittee Report.

Sen. Ken Hansen moved to approve the RSCC Legislative Report with the above amendments. Doug Miller seconded the motion. All voted in favor of the motion.

6.0 TECHNICAL ASSISTANCE UPDATE (Terry Whiteside)

6.1 Terry Whiteside presented an in-depth report that is available online at <http://www.mdt.mt.gov/business/rsc/councilmeetings.shtml>. Main points of the report include:

- Federal Legislative Transportation Activity
- Exciting Happenings in DC
- Surface Transportation Board (STB) Activity – Some Signs of Change are Visible
- General Findings of Christensen Study
- Factual Data on Montana Rail Movements

- All of this Activity is Progress

6.2 Terry Whiteside was asked to report on Interchange/Paper Barriers. The STB decided to increase scrutiny of new interchange commitments in light of shipper testimony in Ex Parte No. 575, Review of Rail Access and Competition Issues. On existing interchange commitments, the Board will only look at one if a shipper brings a regulatory challenge. The USDA is urging the Board to review all existing contractual interchange commitments – without requiring a shipper challenge – in order to promote competition, efficient movement of rail traffic and to discourage unnecessary charges and penalties that may restrain trade. The USDA is also concerned that many existing paper barriers may violate the Sherman Act which prohibits restraint of trade. Terry's report included additional points made by others regarding paper barriers. This information is available at <http://www.mdt.mt.gov/business/rscc/councilmeetings.shtml>

Action Item:

A brief discussion took place regarding pending changes in the makeup of the STB. Future appointments will change the face of the organization but it is uncertain when these changes may be made. Evan Barrett moved for the RSCC to send a letter requesting Governor Schweitzer to encourage the new presidential administration expeditiously make STB appointments so that there are no delays in staffing or in addressing captive shipper issues. Russ Hobbs seconded the motion. All voted in favor to approve.

7.0 GRAIN-RAIL MEDIATION PROCESS AGREEMENT (Will Roehm, MGGA)

Will Roehm, MGGA, gave a presentation titled "Freight Rate Mediation and Binding Arbitration" regarding a process that began several years ago and is now ready to launch. The process will be made available to members of a Montana Producer Organization to resolve rate issues with BNSF Railway. The process works as follows:

- Producer initiates a complaint with the producer organization.
- Producer must be a customer of the O/D rate.
- Producer agrees to be represented by the producer organization.
- Producer organization determines merits and eligibility of the case.
- Producer organization executes Agreement for Mediation and Binding Arbitration.

Mediation begins within 60 days and is to be completed in 30 days with BNSF and the producer organization sharing the cost of a third-party mediator if needed. If mediation fails, arbitration begins in which three arbitrators from a pool hear the case. This begins within 45 days of mediation failure and a judgment is rendered within 120 days with the results made public. The judgment applies one year forward for the adjusted freight rate and one year retroactive for reparations to producer complainants. The loser pays administration costs and arbiter fees; BNSF pays the cost to retain the arbitrator pool. Parties will support the outcome of the mediation and arbitration for one year. It is estimated there will be four or five cases in a year. RSCC members asked to be kept informed as this process evolves.

8.0 SHIPPERS CONSORTIUM/ASSOCIATION UPDATE MONTANA WORLD TRADE CENTER (Arnie Sherman, Nicole Hagerman)

Montana World Trade Center (MWTC) representatives Arnie Sherman and Nicole Hagerman spoke with the RSCC regarding the formation of a shipper's consortium to improve cargo service for the myriad of small businesses around the state. As other states have more volume to bid rate contracts, Montana needs to be creative and raise its freight volume to negotiate better rates. The MWTC would like to work with the RSCC to formalize the idea. The study on container traffic in the state should be available soon from Montana Dept. of Transportation and will add leverage to the work that has already begun. RSCC members expressed support and willingness to work with the MWTC as information becomes available.

Public comment: Gary Schlaeger commented on one way containers as a shipping option. Mr. Schlaeger said that the cost of grain shipped overseas is \$25 per ton less than in bulk shipments. He noted smaller amounts are easier to purchase and one way containers provide an opportunity for small shippers instead of aggregating large numbers.

9.0 MDT REPORTS AND UPDATE

9.1 Draft Consulting Scope of Work for Elements of the Strategic Plan

Hal Fossum presented a Scope of Work for consideration by the RSCC. The Scope of Work was compiled from the Strategic Plan. Items were sorted by common types of work and columns were added to reflect responsible parties and cost estimates.

Task Group A: Identify practices and models in peer states.		Action item	Priority & Benefit	Done by whom (Council, MDT staff, consultants, others)	Hours	Time to complete	Target completion
1	Interchange Agreements: How other states view “paper barriers” agreements and what, if any, public role has been played with respect to them.	1.1.1		MDT, Russ Hobbs, Terry Whiteside, Railroads including shortlines			
2	Container carriers & providers: Any use of public loan pools, investment funds, or other incentive mechanisms to encourage development by container carriers or providers.	2.3.1					
3	Investigate ways to develop and/or redevelop loading facilities for agriculture products across Montana	3.1.3					
4	Haulage rights: Public actions affecting rail access through haulage rights, especially for specialized agricultural producers.	3.2.2		MDT to conduct			
5	State rail authorities: State-level organizations that have worked to preserve rail infrastructure and enhance rail service through rail authorities.	3.2.3					
	TOTAL EFFORT (est.)				80 hours *	6-8 weeks	
Sub-Tasks	<i>Identify states & contacts</i> <i>Develop questions & protocols</i> <i>Coordinate with working groups</i> <i>Conduct interviews & gather published materials</i> <i>Prepare & transmit written reports</i>						

* approx. \$6,000 to 12,000

Task Group B: Develop information from Montana rail carriers, container providers, and shipper/producer groups.		Action item	Priority & Benefit	Done by whom (Council, MDT staff, consultants, others)	Hours	Time to complete	Target completion
1	Describe interchange agreements in the state, including development of scenarios , and identifying published rates for certain shipping options. This is of particular interest to shippers of forest and industrial products.	1.1.1		Russ Hobbs, Whiteside, RRs including Shortlines. Whiteside can provide quick report on the form of interchange agreements			
2	Clarify market thresholds of rail carriers and intermodal container providers, needed to renew and expand intermodal rail service.	2.1.1		Intermodal Subcommittee//MDT Support			
		2.1.2		Intermodal Subcommittee//MDT Support			
3	Investigate creative ideas for expanding intermodal services, including	2.2.1		Intermodal Subcommittee			

	consideration of using salvaged intermodal containers; state-ownership of a container fleet; and development on short lines of intermodal facilities; and other avenues identified.	2.2.2		/GOED			
		2.2.3		Intermodal Subcommittee /GOED			
4	Investigate new partnerships and ways to increase and improve access to UP, CP and Montana shortlines.	3.1.1		Intermodal Subcommittee /GOED			
5	Increase service and improve competitive access to MT shortlines	3.1.2		Shortlines; Buyers and shippers of potential products.			
6	Investigate ways to develop and/or redevelop loading facilities for agriculture products across Montana	3.1.3		Ag Subcommittee to ID pulse growers and to work with the Montana Wheat and Barley Committee			
7	Develop effective coal shipping partnerships with BNSF needed to serve Montana's expanding coal production.	4.1.1		Montana Ag Coalition; Farmers Bureau, MGGA, WIFE, Montana Farm, et al UP, CP			
8	Develop new partnerships to encourage new railroad spur lines to serve Montana's new and expanding coal production.	4.1.2		Coal Subcommittee			
				Governor's Office of Ec Dev and Energy and Promotion Division of Commerce			
	TOTAL EFFORT (est.)				200 hours *	14 - 20 weeks	
Sub-Tasks	<p><i>Coordinate with working groups</i> <i>Develop questions & methods for information gathering</i> <i>Identify organizations and contacts</i> <i>Transmit request to interested parties, organizations, groups</i> <i>Follow-up, receive and synthesize findings</i> <i>Conduct further analysis as necessary</i> <i>Prepare & transmit written reports</i> <i>Caucus or conference activities</i></p> <p>Whiteside or others to be determined</p>						

*** approx. \$15,000 to 30,000**

Task Group C: Describe and document existing mechanisms , including identification of technical assistance resources targeting effective use of existing tools such as:		Action item	Priority & Benefit	Done by whom (Council, MDT staff, consultants, others)	Hours	Time to complete	Target completion
1	State rail authority: Identify policies and programs in place that may support rail authority functions.	3.2.4		MDT // State Rail Working Group			
2	Increase and improve competitive access to Montana shortlines;include wheat and grain rate mediation process	3.1.2		Dept. of Ag and Wheat and Barley and Ag Coalition			
3	Rail Industry Agreement (Rail Industry Working Group) process.	1.1.1		Russ Hobbs // Whiteside//Carla for shortline issues			
4	Interchange agreements enabling rail service for new and expanding markets, particularly for industrial and forest	1.2.1		Hobbs//Whiteside			

	products shippers.						
5	Other mechanisms involving Ports, short lines, Board of Investments, et al., as may be identified in prior tasks.	—		TBD			
	TOTAL EFFORT (est.)				30 hours *	6 - 8 weeks	
Sub-Tasks	<i>Coordinate with working groups</i> <i>Define problems to be solved and identify scenarios</i> <i>Identify critical organizations, rail carriers, etc. & contacts</i> <i>Transmit request for information to interested parties, organizations, groups</i> <i>Follow-up, receive and synthesize findings</i> <i>Prepare & communicate findings</i> <i>Identify obstacles to best use of existing mechanisms</i>						

* approx. \$2,250 to 4,500

Task Group D: Identify and address gaps in the state , including consideration of private mechanisms, public institutions, and public incentives. Options for public policies and institutions should include consideration of economic thresholds and gaps, and estimate fiscal scale of options.		Action item	Priority & Benefit	Done by whom (Council, MDT staff, consultants, others)	Hours	Time to complete	Target completion
1	State rail authority: Assist in policy research and development to support development of such a state level institution in Montana.	3.2.4		RA working group // input from MDT			
2	Intermodal rail carrier service: potential incentive mechanisms to foster improved services across classes of industrial shippers.	2.1.1		Intermodal Subcommittee			
3	Intermodal container availability: potential incentive mechanisms to foster improved services across classes of industrial shippers.	2.1.2		Intermodal Subcommittee			
4	Investigate ways to develop and/or redevelop loading facilities for agriculture products across Montana	3.1.3		Ag Subcommittee // input from MDT			
5	Intermodal services focusing on development of incentives to enhance services to specialized agricultural shippers.	3.2.1		Ag Subcommittee /// input from MDT and GOED			
6	Identify interested partners among short line carriers, container providers, and investors to begin development of practices identified in 2.3.1.	2.3.2					
7	Address other gaps identified through prior activities.	—					
	TOTAL EFFORT (est.)				120 hours *	24 - 40 weeks	

Sub-Tasks	<i>Reassess resource gaps in light of foregoing activities</i>
	<i>Coordinate with working groups</i> <i>Identify organizations and solicit contacts</i> <i>Transmit request to interested parties, organizations, groups</i> <i>Analyze economic gaps / thresholds, and fiscal scale of policy options</i> <i>Follow-up, receive and synthesize findings</i> <i>Prepare & transmit written reports</i> <i>Caucus or conference activities</i>

** approx. \$9,000 to 18,000*

Task Group E: Track and Inform State & Federal Policy.		Action item	Priority & Benefit	Done by whom (Council, MDT staff, consultants, others)	Hours	Time to complete	Target completion
1	Common carrier obligations.	3.2.5		Whiteside & Assoc.			
2	Rail shipping rates.	4.1.3					
3	Provide information to Governor's Office of Economic Development to bring pressure on the inactive STB to address issues concerning shipping rates, etc.	4.1.3		Coal Subcommittee work with Ag Subcommittee to incorporate with Ag in the final offer arbitration // involve Sen. Tester, Whiteside & Assoc.; Alliance for Rail Service Competition			
	Provide information to GOED to quantify the impact of Montana's coal severance tax on the competitiveness of state's coal.	4.1.4		Coal Subcommittee // Center for Applied Economic Research - Scott Rickard Study		1-Jan	
	TOTAL EFFORT (est.)				100 hours *	On going	
Sub-Tasks	<i>Identify policy issues, current interest groups and their activities in state</i> <i>Define Council's interest and capacity in federal policy development</i> <i>Coordinate with working groups</i> <i>Research and develop position papers as appropriate</i> <i>Develop lobbying plan</i> <i>Implement</i> <i>Track</i>						

** approx. \$7,500 to 15,000*

Motions made regarding the above information:

- Larry Bonderud moved for MDT to conduct items one through five as described in Task Group A. Russ Hobbs seconded the motion. All voted in favor.

- Larry Bonderud moved to place items 4.1.1 and 4.1.2 in the Coal Subcommittee Strategic Plan document incorporated into the Work Plan with duties specified as written. Court Jensen seconded the motion. All voted in favor.

9.2 Follow-up regarding the Commerce Clause

During the last RSCC meeting, one participant suggested that the Staggers Act may violate interstate commerce clause of the US Constitution by regulating intrastate commerce and that it might be ripe for a court challenge. MDT staff explored this and found the State's rail service litigation research effort is aware of the issue and will take it into account as it considers all the issues related to potential state initiatives on rail service and rates.

Furthermore, Rudy Saint-Louis, a public service attorney with the STB, noted that States do appear to have authority to regulate intrastate shipments. Rail shipments, however, commonly cross state lines on a multimodal path, so it can be harder than meets the eye to distinguish between inter – and intrastate shipments. In general, goods that cross state lines under a continuous bill of lading are considered one movement. The question becomes less clear when warehousing, repacking, packaging or redistribution are involved.

10. REVIEW AND REFINE RSCC STRATEGIC PLAN

Action Item:

The RSCC reviewed the Strategic Plan and requested Gloria to send an email to the RSCC with a ranking mechanism to establish priorities.

11.0 RAIL UPDATES

11.1 Union Pacific (Evan Barrett)

George Paul reported overall traffic on the UP is steady but with a decline in automobile traffic as is being seen around the country.

11.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud noted billions of dollars are being cancelled in the oil sands because of the downturn in the cost of oil. Upgrades, mining projects, etc., are being canceled in Alberta due to the low cost of oil.

11.3 BNSF Railway (Barbara Ranf)

Barbara Ranf will report at the next RSCC meeting.

11.4 Central Montana Railroad (Carla Allen)

Carla Allen reported CMR is winding up the fall season and getting ready for winter.

12.0 Next Council Meeting

12.1 Meeting Date and Location

Due to the Legislative session, the next RSCC meeting will be held in the evening from 7:00pm – 10:00pm. The meeting will be held January 27th in the Montana Department of Transportation Commission Room. Gloria was asked to send a letter to the Speaker of the House and President of the Senate inviting all legislators to attend the meeting.

12.2 Agenda

Agenda items for the January 27th meeting: Scott Rickard study, priorities for the Strategic Plan and an update from the State Rail Authority Working Group.

13.0 COMMENTS OR ISSUES FROM COUNCIL MEMBERS

No further comments at this time.

14.0 FORMAL PUBLIC COMMENT PERIOD

Patti Schlaeger suggested the RSCC Subcommittees hold transportation forums in the six regions around the state to obtain information directly from producers and shippers. Patti said that taking a meeting to the people would be much more effective than sending surveys. Feedback could be obtained for the Strategic Plan as well.

Gary Schlaeger suggested instead of using complicated surveys to send a “bed bug” letter asking the following: what is good, what is bad, and what should be done differently. Gary said in his experience this simple approach yields more responses with better information.

15.0 ADJOURNMENT

With no further business, Chairman O’Hara requested a motion to adjourn. Larry Bonderud motioned; Carla Allen provided the second. All voted to adjourn.